Supreme Court, U.S.
FILED
JUN 24 2004

No. 031721

In The

Supreme Court of the United States

LUCRETIA G. VINTILLA,

Petitioner,

v.

CITY OF ROCKY RIVER, OHIO, R. BIRD,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court of Appeals
For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a 12 (b) (6) Federal Rules of Civil Procedure motion to dismiss a complaint for failure to state a claim for relief may be converted into a motion for summary judgment and disposed of as provided in Rule 56 where the record is devoid of matters outside the pleadings containing such facts as would be admissible in evidence to show that there is no genuine issue for trial as required by Rule 56?

2. Where the district court failed to give petitioner either notice of the conversion of a Rule 12 (b) (6) motion into one for summary judgment or an opportunity to respond, did the lower court commit prejudicial error in ruling that the district court properly granted summary judgment for the respondents and in affirming the dismissal of the complaint?

3. Whether procedural due process will support a Section 1983 claim against a police officer whose false charge in a sworn complaint caused an insurance company to cancel the automobile accident policy of its insured and to substitute a new policy at a substantial increase in the premium?

4. Whether substantive due process will support a Section 1983 claim against a police officer who falsely charged a person in a sworn complaint of a violation of the law and implicated the latter in a criminal prosecution which was dismissed before trial?

5. Whether respondent City is liable for the unlawful behavior of a police officer when he acts in a law enforcement capacity as a member of its police department?

PARTIES TO THE PROCEEDINGS

The parties to the proceeding are those set forth in the caption of the case, to wit: Lucretia G. Vintilla, City of Rocky River, Ohio, R. Bird and Rocky River Police Department.

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OPINIONS BELOW

The opinions of the Court of Appeals and of the District Court are unreported and appear in the appendix hereto.

JURISDICTION

The judgment of the Court of Appeals was entered on March 3, 2004. A petition for rehearing was denied on April 15, 2004, and this petition for certiorari was timely filed. The Court's jurisdiction is invoked under 28 U. S. C., Section 1254 (1).

CONSTITUTIONAL STATUTORY PROVISIONS AND FEDERAL RULE INVOLVED

Fifth and Fourteenth Amendments to the Constitution. Title 42 U.S.C., Sections 1983 and 1985. Rule 12 (b) (6) of the Federal Rules of Civil Procedure. They appear in the appendix.

STATEMENT OF THE CASE

Petitioner instituted a civil rights action in the district court to vindicate the deprivation of her constitutional rights under the Fifth and Fourteenth Amendments to the Constitution pursuant to Sections 1983 and 1985 of Title 42 of the United States Code and the jurisdictional counterpart, 28 U.S.C., Sections 1331 (a) and 1343 (3). The suit was filed against respondents - City of Rocky River, Ohio, the Police Department of the City and police officer, R. Bird.

The genesis of the instant suit is the unlawful behavior of respondent, R. Bird (hereafter "Bird") in filing a sworn complaint containing a false charge against the petitioner which subjected her to criminal prosecution that was eventually dismissed by Bird prior to trial.

The established material facts are undisputed in the record. They show the following:

On December 10, 2000, at or about 10:56 a.m., an automobile owned and driven by the petitioner going south on Wooster Road in Rocky River, Ohio, was suddenly struck by another vehicle proceeding in the same direction after she had given the appropriate right turn signal and made a right turn from the curb lane into the parking lot of a church, her ultimate destination. After the exchange by the parties of the requisite information relative to the accident, they each moved their respective vehicle from the position in which they appeared at the time of the collision to clear the entrance to the church parking lot. Subsequently, Bird, a police officer of the Rocky River Police Department, appeared at the scene of the accident. The latter first talked to the other party to the accident, and then to the petitioner, who protested her innocence for the accident. Nonetheless, Bird told her and insisted that she was at fault for the accident. He did not cite her for a violation of the law, and told her she would soon be hearing from a magistrate. There was no witness to the accident other than the parties.

Petitioner did not hear from anyone regarding the accident. However, shortly thereafter, she received a Summons in Lieu of Warrant commanding her to appear before a Judge of the Rocky River Municipal Court to plead to the charge that she violated Section 311.11 (a) of the city Traffic Code and thereby caused the accident.

The Summons requiring petitioner to appear in court to answer the aforesaid charge was provoked by and based upon the sworn complaint executed by Bird. In response to the summons, petitioner appeared in court with counsel and entered a plea of not guilty. The case was set for trial on a day certain. On the trial date, petitioner appeared with her lawyer, prepared to defend against the charge. While awaiting the call to trial, petitioner was approached by Bird, and after a discussion, the latter agreed to dismiss and did dismiss the complaint.

Petitioner attempted to meet with the City prosecutor prior to the trial date to discuss the case, but without avail. Petitioner's counsel then wrote a letter to the Prosecutor setting forth his concerns regarding Bird's behavior in connection with the accident. He requested a meeting with the Prosecutor to inform him of Bird's conduct, and wrote, "You will agree, I believe, that the consequences to my client could be grave if the official's conduct is invalid." A similar letter was sent to the City's Law Director. There was no response from either of them, or from any other source. Petitioner then filed a motion to dismiss the complaint, supported by appropriate affidavit and brief. A copy was sent to the prosecutor, Law Director and to the presiding judge. The motion was not challenged. The judge did not rule on the motion or otherwise communicate with counsel.

As a result of the sworn complaint and the criminal proceedings that ensued, petitioner's automobile insurance company declared petitioner "at fault" for the accident, cancelled the insurance policy and subsequently issued another policy at a substantial increase in the premium.

The petitioner filed the instant action in the district court, followed by a motion for summary judgment, accompanied by a supporting affidavit and other appropriate evidence. The respondents filed a motion to dismiss the

complaint and a brief, but did not respond to petitioner's motion for summary judgment as required by Rule 56, Federal Rules of Civil Procedure.

The district court denied petitioner's motion for summary judgment and granted respondents' motion to dismiss the complaint.

On appeal, the Sixth Circuit, in a short order, declared: "Upon review, we conclude that the district court properly granted summary judgment in favor of Bird because he is entitled to qualified immunity." The application for rehearing was denied.

REASONS FOR GRANTING THE PETITION

Supreme Court Rule 10 delineates the considerations used by this Court in deciding whether to exercise its discretion to grant a petition for writ of certiorari. One consideration is that a "United States Court of Appeals has decided an important question of federal law...that conflicts with relevant decisions of this Court." Another consideration is that a "United States Court of Appeals has entered a decision in conflict with the decision of another United States Court of Appeals on the same matter"...Finally, the Court considers whether the Court of Appeals decision "has so far departed from the accepted and usual course of judicial proceedings...as to call for an exercise of this Court's supervisory power..."

All of these considerations are present in this case. The mandatory requirements of Rule 12 (b) (6), Federal Rules of Civil Procedure raise important questions of federal law. The lower court's decision that the district court properly granted summary judgment in favor of Bird under Rule 12 (b) (6) was reached in defiance of the undisputed material facts in the

record and in direct conflict with the decisions of this Court in Celotex v Cabrett, 422 U.S. 317, 326, Carter v Stanton, 405 U.S. 669, the Sixth Circuit's established rule set forth in Salehpour v University of Tennessee, 169 F. 3d 199, and with decisions of other circuit courts that interpreted Rule 12 (b) (6). The lower court's treatment of the other substantive issues raised on appeal by petitioner as moot, by reason of its grant of summary judgment under Rule 12 (b) (6), is such a departure from the usual course of judicial proceedings that the Court should exercise its supervisory powers. Finally, review is warranted to provide guidance to the lower courts in applying the requirements of Rule 56 (c) to the grant of a summary judgment pursuant to Rule 12 (b) (6), Federal Rules of Civil Procedure.

The Court's review is warranted for all these reasons.

I. Review Is Warranted Because The Lower Court's Decision Conflicts With Relevant Decisions Of This Court, With The Established Rule Of The Sixth Circuit And With The Decisions Of Other United States Court Of Appeals On The Proper Use of Summary Judgment Under A Rule 12 (b) (6) Motion To Dismiss.

The lower court held: "Because the record contained material outside the pleadings, which the district court did not exclude from consideration, the district court properly characterized the defendants' motion to dismiss as a motion for summary judgment. See Federal Rules of Civil Procedure 12 (b) (citations omitted.)"

Rule 12 (b) (6) provides that a motion to dismiss for failure to state a claim for relief may be treated as a motion for summary judgment and disposed of as provided in Rule 56 if "matters outside the pleadings are presented to and not

excluded by the court." The Rule also contains the caveat that "all parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by Rule 56."

The district court failed to give the petitioner reasonable notice of the conversion of the Rule 12 (b) (6) motion into one for summary judgment or an opportunity to respond to the said motion. Nonetheless, the lower court held that the district court properly granted summary judgment for the respondents. It should be noted that the district court did not enter an order granting summary judgment for the respondents. In the Conclusion to the Memorandum of Opinion and Order, the district court ruled: "Based on the foregoing, Plaintiff's Motion for Summary Judgment, ECF No. 5 is DENIED; and Defendants' Motion to Dismiss, ECF No. 6, is GRANTED..."[1] Accordingly, final judgment was entered dismissing the case.

The lower court's finding that "the record contained material outside the pleadings which the district court did not exclude from consideration" is seriously flawed. There is no material (evidence) outside the pleadings in the record, and nothing has been presented by the respondents as required by Rule 56 to show that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

Despite this state of the record, the lower court concluded that "the district court properly granted summary judgment in favor of Bird because he is entitled to qualified immunity."

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[1] The respondents' motion was simply a motion to dismiss, not a motion to dismiss or in the alternative a motion for summary judgment. From the record, it appears that the respondents' never sought to have the motion to dismiss treated as a motion for summary judgment.

Admittedly, petitioner did not respond to the alleged motion for summary judgment since she had no knowledge that the district court had treated the motion to dismiss as one for summary judgment.

The alarming aspect of the lower court's decision and its denial of the petition for rehearing is that in doing so it violated the petitioner's due process rights to notice and an opportunity to defend with respect to the Rule 12 (b) (6) grant of summary judgment to the defendants as secured to her by the Fifth and Fourteenth Amendments of the United States Constitution, and by the mandatory requirement of said Rule that "all parties shall be given reasonable opportunity to present all material pertinent to such a motion by Rule 56." This latter provision of Rule 12 (b) (6), in effect, incorporated the due process and equal protection provisions of the federal constitution in its body.

Federal Rule of Civil Procedure 56 (c) provides that summary judgment is proper "if the pleadings, deposition, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." The party moving for summary judgment bears the initial burden of showing that there is no genuine issue of material fact. Celotex Corp. v Catrett, 477 U.S. 317, 323 (1986).

Adickes v S. H. Kress & Co., 398 U.S. 144, 159 held:

> The party opposing the motion for summary judgment bears the burden of responding *only* after the moving party has met its burden of coming forward with proof of the absence of any genuine issues of material fact." (Emphasis by the Court).

In Celotex, *supra*, at 326, the court noted:

> "That district courts are widely acknowledged to possess the power to enter summary judgments *sua sponte*, so long as the losing party was on notice that she had to come forward with all evidence." (underlining supplied).

The authors of Moore's Federal Practice, 3rd Ed., Section 12.34 (3) (b), state, with reference to the conversion option of Rule 12 (b) (6), as follows:

> When converting a Rule 12 (b) (6) motion to dismiss to a motion for summary judgment, the district court must give all parties notice and reasonable opportunity to present all material then made pertinent to Rule 56 (c). This does not mandate oral hearing but rather invokes the Rule 56 (c) provision for 10 days advance notice to the adverse party that the motion and all materials in support of or in opposition to the motion will be taken under advisement by the trial court as of a day certain.

The Eleventh Circuit requires the district judge to give all parties ten-day notice that he is converting the motion to dismiss into one for summary judgment by considering all matters outside the pleadings. This Circuit compels strict adherence to Rule 56 (c) requirement of 10 days notice and will reverse the dismissal without reviewing the merits of the motion for summary judgment. Jones v Automobile Insurance Co., 917 F. 2d 1528, 1532 (1990).

The plain language of Rule 12 (b) (6) mandates that the adverse party must be given a reasonable opportunity to

defend against motion for summary judgment that is being considered under the rule. Circuit Courts have held that the district judge must give notice that he is considering summary judgment under Rule 12 (b) (6), and must accord the adverse party a reasonable opportunity to respond to the motion for summary judgment before he grants the judgment. Failure to do so will result in reversal of the dismissal. In re Rockefeller Ctr. Props., Sec. Litig, 184 F 3d 280, 287-289 (3d Cir. 1999); Belogun v INS, 9 F 3d 347, 352 (5th Cir. 1993); Alioto v Marshal Fields & Co., 77 F 3d 934, 936, (7th Cir. 1996); Court v Hall County, Neb. 725 F 2d 1170 (8th Cir. 1984).

The Panel in this case disregarded the Sixth Circuit's established rule on the subject issue as enunciated in Salehpour v Univ. of Tenn., 159 F 3d 199, wherein the court held:

> Where one party is likely to be surprised by the proceedings, notice is required.

The Panel also overlooked the reference in Salehpour to this Court's admonition in Celotex that the losing party must be put on notice that she "had to come forward with all the evidence" when the court has under consideration a motion for summary judgment.

The lower court decision is in direct conflict with the decision of this Court in Carter v Stanton, 405 U.S. 669 (1972), and with the Court's admonition in Celotex, *supra*.

The per curiam opinion in Carter stated:

> ...it appears that at the hearing on the motion to dismiss, which was based in part on the asserted failure "to state a claim upon which relief can be granted"... matters outside the

> pleadings were presented and not excluded by the court. The court was therefore required by Rule 12 (b) of the Federal Rules of Civil Procedure to treat the motion to dismiss as one for summary judgment and to dispose of it as provided in Rule 56.

The Court went on to state:

> Under Rule 56, summary judgment cannot be granted unless there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. If this is the course the district court followed, its order is opaque and unilluminating as to either the relevant facts or the law with respect to the merits of appellants' claim. In this posture of the case, we are unconvinced that summary judgment was properly granted.

The aforesaid statement is particularly relevant with respect to the propriety of the lower court's *de novo* review and ruling regarding the Rule 12 (b) (6) issue in the case.

II. Substantial Legal Issues Presented On Appeal Were Rendered Moot By The Lower Court's Erroneous Affirmance Of The Grant Of Summary Judgment.

The lower court's decision represents a simplistic and summary disposition of an appeal that involves substantial questions of law affecting fundamental rights which have not been addressed by the court.

Bird did not have *personal knowledge* of the facts and circumstances surrounding the accident to enable him to

affirm the truth of the statement he had given under oath and filed with the trial court that petitioner had violated Section 311.11a or the city's traffic code; i.e., that she did not make a right turn into the church parking area "from as close as practicable to the right hand curb or edge of (Wooster) the roadway."

No apparent facts exist which, upon reasonable inquiry, would induce a fair and prudent person to believe that petitioner had committed the offense with which she was charged. Bird's sworn statement upon which he made the charge and on which the complaint against the petitioner was filed and pursued was based entirely on that which he was told by the other party to the accident. Bird chose to believe the other party's version of the accident, and to act upon that information, without any corroborating or independent evidence to support it. Pure hearsay - totally inadmissible, incompetent and unacceptable upon which to lodge a criminal charge against the petitioner or any person under our system of justice. An oath is an affirmation of the truth of a statement, which renders one asserting untrue statements punishable by perjury. Black's Law Dictionary, 5 ed.

That which occurred in the instant case is not uncommon in many automobile accident situations where the officer arrives at the scene after the collision, the vehicles are no longer in the collision position and there are no witnesses other than the parties. It is customary in such circumstances for the officer to advise the parties to resolve the matter among themselves or to resort to their legal remedies. This was not done in the present case. It is to be noted that the other party to the accident would have been the appropriate one to file a complaint against the petitioner if he, in fact, believed that petitioner was at fault. This would have been the normal thing to do. Inexplicably, the opposing party was relieved of that burden due to Bird's drastic decision to usurp the function of a judicial tribunal and declare the petitioner

the guilty one at the scene of the accident. The record is completely silent as to the reason or justification for such unconventional conduct by Bird. The opposing party, having the benefit of Bird's official pronouncement that petitioner was a fault, submitted a claim to petitioner's Insurer for his damage which the latter paid immediately.

Admittedly, the duty of a police officer to investigate an automobile accident between citizens, and to file a record of his findings is a necessary and important function of his office; however, due process requires him to do so in an impartial and fair manner. When police are permitted to act ungoverned by due process, they become unaccountable to the public for their wrongful acts and conduct.

The lower court's response to the issues raised on appeal is stated in the decision as follows: "Vintilla's complaint failed to allege that Bird violated a clearly established constitutional right under the Due Process Clauses of the Fifth and Fourteenth Amendments (citations omitted). In addition, Vintilla's malicious prosecution claim fails because she did not allege a Fourth Amendment claim (citation omitted)."

The aforesaid conclusions were reached by the court in complete defiance of the undisputed material facts in the record and with a clear misapprehension or denial of the controlling law.

The lower court overlooked and did not consider the substantial issues which were properly presented for review and decision by the petitioner, to wit: 1) Petitioner's motion for summary judgment. 2) Due Process and the Insurance Issue. 3) Brandon v Holt, 483 U.S. 464, as the authority for the section 1983 claim against the City. 4) Petitioner's section 1983 malicious prosecution claim.

PETITIONER'S MOTION FOR SUMMARY JUDGMENT

Petitioner filed a motion for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure with supporting affidavits in compliance with the requirements of the Rule. The respondents did not come forward with proof of the absence of any genuine issue of material fact as required by Rule 56 (e) See Adickes, supra; Anderson v Liberty Lobby, 44 / U.S. 242, 250 (1986). The district court denied the motion without any remarks or observations about the propriety of the motion. The lower court ignored petitioner's motion entirely.

DUE PROCESS AND THE INSURANCE ISSUE

Petitioner was informed by a letter from her automobile insurance company that they had declared her at fault for the accident of December 10, 2000, and that her policy had been cancelled as a result thereof. Thereafter, a new policy was issued at a substantial increase in the premium.

The district court held that "Vintilla cannot establish a procedural due process violation because she cannot show that the government deprived her of her property; i.e., that the government increased her insurance premiums. Any claim that she has over the increase in her insurance rates must be taken up with her insurance company." The lower court ignored this issue completely, although it was properly before it for review and decision.

The evidence is undisputed that respondent Bird had caused the cancellation of petitioner's policy and the subsequent increase in the premium by falsely declaring her as the guilty party for the accident, and by placing that information in a sworn complaint which became a part of the

official court record. In doing so, respondent Bird made the information accessible and facially reliable to the insurance company and the general public. Had Bird not lied in stating that the petitioner violated the law and caused the accident, there would have been no basis for the insurer to cancel her policy and issue a new one with an increase in the premium.

The evidence demonstrates beyond dispute that there was a direct link between Bird's behavior and the deprivation of property without due process of law.

SECTION 1983 CLAIM FOR MALICIOUS PROSECUTION

The lower court held that "Vintilla's (petitioner) malicious prosecution claim fails because she did not allege a Fourth Amendment claim. See *Thacker v City of Columbus*, 328 F. 3d 244, 258 (6th Cir. 2003)".

Petitioner did not specifically allege the Fourth Amendment as one of the federal constitutional rights that Bird had violated in his actions against her. However, the record does contain sufficient undisputed evidence to establish that petitioner is entitled to the protection of the amendment.

The question that arises in this connection is whether petitioner has waived the right to the protection of the amendment because she did not allege it in the complaint. Rule 15 (a), Federal Rules of Civil Procedure states: "A party may amend a pleading as a matter of course at any time before a responsive pleading is served."

A responsive pleading to the complaint was not served on the petitioner. Instead, the respondents filed a motion to dismiss the complaint for failure to state a cause of action,

and a brief in opposition to petitioner's motion for summary judgement.

In view of the status of the case, and under the facts and circumstances in the record, petitioner had a clear right to amend the complaint to allege a Fourth Amendment claim. This issue became moot as a result of the district court's dismissal of the complaint.

The facts and circumstances of the instant case, whereby a police officer has charged the petitioner falsely in a sworn complaint and implicated her in criminal prosecution that was dismissed before trial, demonstrate that this is a case of egregious behavior which will support a 1983 malicious prosecution claim under substantive due process of law.

The Sixth Circuit appears to acknowledge a Fourth Amendment right to be free from malicious prosecution. In Spurflock v Saterfield, 167 F. 3d 995, 1006 (1999), the court interpreted Albright v Oliver, 510 U.S. 266, 271 (1994) as authorizing a Fourth Amendment malicious prosecution claim. See also Johnson v Ward, 43 Fed. Apx. 779, 2002, WL 1774215 (6th Cir. 2002). Nonetheless, the panel overlooked these rulings in reaching its decision.

SECTION 1983 CLAIM AGAINST THE CITY

The question whether the City of Rocky River is a proper party to this action has been answered by this Court in Brandon v Holt, 469 U.S. 464 at 451:

> In at least three recent cases arising under Section 1983, we have implied that a judgment against a public servant in his official capacity imposes liability on the entity that he represents, provided, of course, the public entity received notice and an

opportunity to respond. We now make this point explicit.

Brandon has been followed by many circuit courts and by this court. In McMillian v Monroe County (1997), 138 L. Ed. 2d 1, the court stated p. 7, fn. 2:

> We have explained that a suit against a governmental officer "in his official capacity" is the same as a suit "against (the) entity of which (the) officer is an agent." Kentucky Graham, 473 U.S. 159, 165, quoting Monell v New York City Department of Social Services, 436 U.W. 658, 690, frn. 5 (1978), and victory in such an "official capacity, imposes liability on the entity that (the) officer represents." Brandon v Holt, 469 U.S. 464, 471 (1985).

The entire notion of holding a municipality or some other government entity liable under Section 1983 rests upon the belief that the entity is somehow represented by the individual person who is specifically named as a defendant and who actually committed the alleged constitutional violation. It is clear, petitioner believes, that Bird represents the City of Rocky River when he acts in a law enforcement capacity as a member of the Rocky River Police Department.

The gravamen of the petitioner's complaint is that she was falsely charged with a criminal offense in a sworn statement filed by a police officer that required her to defend against a criminal prosecution of that charge which was dismissed on the initiative of the police officer while she was in court awaiting the call to trial.

As a consequence of the officer's actions and behavior, petitioner was compelled to engage legal counsel, with its attendant loss of time and monetary expense, to make court

appearances, prepare for trial, suffer anxiety, humiliation, curtailment of liberty, loss of property and the invasion of her privacy.

The district court trivialized the police officer's constitutional transgressions, and the serious consequences endured by the petitioner, and went on to characterize the controversy as nothing more than the officer's disagreement with the petitioner as to who caused the accident. This conduct of the district court was sanctioned by the lower court in its silence with respect thereto.

The basic rights secured to all persons by the Constitution of the United States must be scrupulously safeguarded by all government officials in whom the people have reposed the duty to protect and preserve those rights. The violation of any of those rights must not be condoned simply because they have arisen in the context of a police court matter.

It is a truism that many citizens have their first and perhaps only encounter with the administration of justice in a police court. The experience in that court may very well form their respect or lack of respect for the fairness of our courts and the integrity of the law.

CONCLUSION

The petition for a writ of certiorari should be granted and the Court should reverse the lower court's order for the reasons set forth herein. Petitioner requests that the Court provide uniform guidance to the lower courts as to the proper use of summary judgment under Rule 56 of the Federal Rules of Civil Procedure in a Rule 12 (b) (6) situation of the Rules. Petitioner further requests that the Court consider whether the Court of Appeals has so far departed from the accepted and

usual course of judicial procedures as to call for the exercise of the Court's supervisory power.

Respectfully submitted,

JOHN R. VINTILLA

APPENDIX A

No. 03-3543

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LUCRETIA G. VINTILLA,	)	FILED APRIL 15, 2004 LEONARD GREEN, CLERK
	)	
Plaintiff-Appellant,	)	
v.	)	
	)	ORDER
CITY OF ROCKY RIVER, OHIO; R. BIRD,	)	
	)	
Defendants-Appellees.	)	

Before: MARTIN and CLAY, Circuit Judges: MILLS, District Judge.*

Lucretia G. Vintilla, proceeding through counsel, petitions the court to rehear its order, filed on March 3, 2004, which affirmed a district court judgment dismissing her civil rights complaint filed pursuant to 42 U.S.C. § § 1983 and 1985.

Upon careful consideration, this panel concludes that it did not misapprehend or overlook any point of law or fact when it issued its order. Fed. R. App. P. 40(a). The petition for rehearing is denied.

ENTERED BY ORDER OF THE COURT

/ s / Leonard Green
Clerk

*The Honorable Richard Mills, United States District Judge for the Central District of Illinois, sitting by designation.

APPENDIX B

No. 03-3543

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LUCRETIA G. VINTILLA,	)	FILED
	)	MARCH 3, 2004
Plaintiff-Appellant,	)	LEONARD GREEN,
v.	)	CLERK
	)	ORDER
CITY OF ROCKY RIVER, OHIO; R. BIRD,	)	
	)	
Defendants-Appellees.	)	

Before: MARTIN and CLAY, Circuit Judges: MILLS, District Judge.*

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION
Sixth Circuit Rule 28 (g) limits citation to specific situations., Please see Rule 28(g) before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court.

This notice is to be prominently displayed if this decision is reproduced.

Lucretia G. Vintilla, proceeding through counsel, appeals a district court judgment dismissing her civil rights complaint filed pursuant to 42 U.S.C. § § 1983 and 1985(3). This case has been referred to a panel of the court pursuant to Rule 34 (j)(1), Rules of the Sixth circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

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*The Honorable Richard Mills, United States District Judge for the Central District of Illinois, sitting by designation.

Seeking monetary relief in the form of compensatory and punitive damages, Vintilla filed a complaint against the City of Rocky River, Ohio ("City"), and R. Bird, a police officer employed by the Rocky River Police Department. Relying upon the Fifth and Fourteenth Amendments, Vintilla alleged that the defendants violated her due process and equal protection rights. Vintilla explained that on December 10, 2000, the vehicle that she was driving collided with another vehicle. Vintilla and the driver of the other vehicle exchanged pertinent information and moved their vehicles from their respective collision positions. Bird subsequently responded to the accident scene and, after interviewing both parties, informed Vintilla that the accident was her fault. Thereafter, Vintilla alleged that she received a Summons in Lieu of Warrant commanding her to appear at the Rocky River Municipal Court "to plead to a charge that she had violated Section 311.11a of the traffic code of Rocky River and thereby caused the aforementioned accident." Vintilla alleged that the summons was based upon Bird's sworn complaint, which found her at fault for the accident. Vintilla alleged that she entered a plea of not guilty, but on the date set for trial, Bird agreed to dismiss the charge.

Vintilla also alleged that, following the accident, her automobile insurance carrier determined that she was at fault for the December 10, 2000, accident and canceled her insurance policy. Vintilla's insurance carrier subsequently renewed her policy, but substantially increased her premium. According to Vintilla, her insurance carrier's actions were based upon Bird's "improper report" and "unlawful complaint" made after the December 10, 2000, accident.

Vintilla filed a motion for summary judgment and the defendants filed a motion to dismiss. the district court denied Vintilla's motion, granted the defendants' motion, and

dismissed the case. The district court subsequently denied Vintilla's motion to reconsider. Vintilla now appeals.

Because the record contained material outside of the pleadings, which the district court did not exclude from consideration, the district court properly characterized the defendants' motion to dismiss as a motion for summary judgment. *See* Fed. R. Civ. P. 12 (b); *Soper v. Hoben*, 195 F. 3d 845, 850 (6th Cir. 1999); *Salehpour v. Univ. of Tenn.*, 159 F 3D 199, 204 (6th Cir. 1998). We review the district court's grant of summary judgment de novo. *Lanier v. Bryant*, 332 F. 3d 999, 1003 (6th Cir. 2003).

Upon review, we conclude that the district court properly granted summary judgment in favor of Bird because he is entitled to qualified immunity. In order to survive a defendant's assertion of qualified immunity, the plaintiff must allege sufficient facts to show that the defendant's conduct violated a clearly established constitutional right. *Saucier v. Katz*, 533 U.S. 194, 200 (2001); *Siegert v. Gilley*, 500 U.S. 226, 232-33 (1991); *Mattox v. city of Forest Park*, 183 F. 3d 515, 520 (6th Cir. 1991).

Vintilla's complaint failed to allege that Bird violated a clearly established constitutional right under the Due Process Clauses of the Fifth and Fourteenth Amendments. *See Buchanan v. Apfel*, 249 F. 3d 485, 491 (6th Cir. 2001) (substantive due process); *Macene v. MJW, Inc.*, 951 F. 2d 700, 706 (6th Cir. 1991) (procedural due process). In addition, Vintilla's malicious prosecution claim fails because she did not allege a Fourth Amendment claim. *See Thacker v. City of Columbus*, 328 F. 3d, 244, 258 (6th Cir. 2003).

We further conclude that the district court properly granted summary judgment in favor of the City. Governmental entities cannot be held responsible for a constitutional deprivation unless there is a direct casual link

between a municipal policy or custom and the alleged violation of constitutional rights. *Monell v. Dept. of Soc. Servs.*, 436 US. 658, 691 (1978); *Gregory v. Shelby County, Tenn.*, 220 F. 3d 433, 442 (6th Cir. 2000). Moreover, the theory of respondent superior simply cannot provide the basis for liability in § 1983 actions. *Monell*, 436 U.S. at 691.

Vintilla neither alleged in her complaint nor presented any evidence in response to the defendants' motion for summary judgment that the City operated pursuant to an unconstitutional policy or custom requiring its police officers to violate the constitutional rights of its citizens. Even if Bird did violate Vintilla's constitutional rights, the City cannot be held responsible for his conduct under § 1983 simply because the City employed Bird. *See id; Stemler v. City of Florence*, 126 F. 3d 856, 865 (6th Cir. 1997).

Vintilla has waived appellate review of the district court's dismissal of her Fifth and Fourteenth Amendment equal protection claim, her § 1985 (3) claim, and her claim for punitive damages against the City. *See Buziashvili v. Inman*, 106 F. 3d 709, 719 (6th Cir. 1997); *Boyd v. Ford Motor Co.*, 948 F. 2d 283, 284 (6th Cir. 1991).

Accordingly, we affirm the district court's judgment. Rule 34 (j) (2) (c), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

/ s / Leonard Green
Clerk

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHO
EASTERN DIVISION

FILED
MARCH 7, 2003
CLERK, U.S. DISTRICT
COURT
NORTHERN DISTRICT
OF OHIO - CLEVELAND

LUCRETIA G. VINTILLA,	)	CASE NO. 1:02 CV
	)	2291
Plaintiff	)	
	)	JUDGE DAN
vs.	)	AARON POLSTER
	)	
	)	MEMORANDUM OF
CITY OF ROCKY RIVER, et al	)	OPINION AND
	)	ORDER
Defendants	)	

Before the Court is Plaintiff's Summary Judgment Motion, ("Plaintiff's Motion") **(ECF No. 5)** and Defendants' Motion to Dismiss, ("Defendants" Motion") **(ECF No. 6)**. Plaintiff Lucretia G. Vintilla, who was cited by Defendant Police Officer Richard Bird for causing a car accident when she entered her church parking lot on December 10, 2000, has sued Officer Bird and Defendant City of Rocky River ("city") under 42 U.S.C. § § 1983 and 1985 (3) for violating her rights under the Fifth and Fourteenth Amendments of the United States Constitution. For the following reasons, the Court

DENIES Plaintiff's Motion and **GRANTS** Defendants' Motion.

I. Facts

On December 10, 2000, Vintilla was involved in an accident with another vehicle after she made a right hand turn from the curb lane into the parking area of the Romanian Orthodox Church. Vintilla and the driver of the other vehicle exchanged insurance information and pulled their cars off to the side of the road. Thereafter, Officer Bird arrived at the scene and interviewed all of the involved parties. Officer Bird told Vintilla that she was at fault for the accident and that she would soon be hearing from a magistrate. He returned to his office and, after reviewing his notes, issued Vintilla a citation for violating Traffic Code 331.11 (a) of the City of Rocky River.

> The driver of a vehicle intending to turn right into a private road or driveway . . . from a public street or highway shall be governed by the following rule. (a) Approach for a right turn and a right turn shall be made as close as practicable to the right hand curb or edge of the roadway.

Based on the citation issued to Vintilla in this accident, and a "backing accident" on January 2, 2000, *Plaintiff's Complaint*, Exh. 7a, Vintilla's insurance company canceled her policy. After she complained to the insurance company, the company reinstated her policy but at an increased rate.

Vintilla received a Summons in Lieu of Warrant commanding her appearance before Rocky River Municipal Court on January 24, 2001. Vintilla appeared in court and entered a plea of not guilty to the charge. The case was

scheduled for trial on February 26, 2001. Vintilla filed a motion to dismiss on February 17, 2001. On the morning of the trial date, Officer Bird, upon speaking with all the parties involved and hearing that Vintilla's insurance company compensated the other driver in the accident, dismissed his complaint.

Vintilla's complaint alleges that Officer Bird's sworn complaint, which generated and formed the basis of the criminal proceeding against her, violated rights secured to her by the Constitution of the United States. Vintilla is seeking compensatory damages of $35,000, punitive damages of $5,000, and reasonable attorney's fees.

II. Standard of Review

Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56©. "In considering a motion for summary judgment, the Court must view the facts and draw all reasonable inferences therefrom in a light most favorable to the nonmoving party." *Williams v. Belknap,* 154 F.Supp.2d 1069, 1071 (E.D.Mich.2001) (citing *60 Ivy Street Corp. v. Alexander,* 822 F.2d 1432, 1435 (6th Cir. 1987). If, after reviewing the record as a whole, a rational fact finder could not find for the nonmoving party, summary judgment is appropriate since there is no genuine issue for trial. *See LaPointe v. United Autoworkers Local 600,* 8 F.3d 376, 378 (6th Cir. 1993). Although Defendants filed a motion to dismiss, they attached Officer Bird's affidavit. *ECF No. 6.* Accordingly, the Court will also treat Defendants' motion as one for summary judgment. *Salehpour v. University of Tennessee*, 159 F.3d 199, 900 (6th Cir. 1998) (holding that it

is appropriate to treat a motion for dismiss that goes beyond the pleadings as a motion for summary judgment).

III. Law and Analysis

To prevail on a civil action under 42 U.S.C. § 1983[1], a plaintiff must plead and prove that the defendant, acting under the color of state law, deprived him of a right secured by the Constitution and laws of the United States[2]. *Paul v. Davis,* 424 U.S. 693, 700 (1976); *Sutton v. Cleveland Bd. of Educ.,* 958 F2d 1339, 1348 (6th Cir. 1992). However, qualified immunity protects officers performing discretionary functions from § 1983 actions insofar as their conduct does not violate clearly-established constitutional rights of which a reasonable person would have known. *Jackson v. Leighton,* 168 F.3d 903, 909 (6th Cir. 1999) (citing *Harlow v. Fitzgerald,* 457 U.S. 800, 818 (1982). Qualified immunity protects public officials from the harsh burden of litigation; thus, the threshold immunity question should be addressed as early in the litigation as possible. *Siegert v. Gilley,* 500 U.S.

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[1]Vintilla also alleges a 42 U.S.C. § 1985 claim. However, she never argues the merits of this claim nor does she even mention this claim in her Supplemental Answer Brief. Although Vintilla claims that she was deprived of equal protection of the laws in her complaint, she states no basis for this claim in her motion. The Court will treat this absence as a concession that her § 1985 lacks merit and will solely address her § 1983 claim.

[2]42 U.S.C. § 1983 provides in relevant part that:

> Every person, who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

226, 232 (1991); *Saylor v. Board of Educ.*, 118 F.3d 507, 512 (6th Cir. 1997). Before determining whether the right violated was clearly established or examining the reasonableness of a defendant's conduct in relation thereof, the Court should decide as a preliminary matter whether a violation of a constitutional right occurred at all. *Jackson*, 168 F.3d at 909 (citing *Siegert*, 500 U.S. at 232). If the Court finds that no right was in fact violated, then the Court need not inquire further into whether the defendant satisfies the remaining elements of the qualified immunity doctrine. *Saucier v. Katz*, 533 U.S. 194, 201 (2001).

A. Claims Against Officer Bird

Vintilla, who brings her § 1983 claims under the Fifth and Fourteenth Amendments, *Plaintiff's Complaint*, at 1, frames her summary judgment argument in the following manner:

> The central issue in the case and the crux of the instant litigation is whether defendant Bird's sworn complaint, which generated and formed the basis of the criminal proceedings against the plaintiff in the Rocky River Municipal Court, violated the rights of the plaintiff as secured to her by the Constitution of the United States.
>
> The threshold question that must be answered is whether defendant Bird acted unlawfully in executing, in filing and in pursuing the complaint against the plaintiff in the Rocky River Municipal Court.

Plaintiff's Motion, at 1. While Vintilla acknowledges that it is the duty of a police officer to investigate automobile accidents and to file a record of his findings, she claims that

due process requires that he do so in an impartial and fair manner. *Plaintiff's Motion,* at 3-4. Accordingly to Vintilla, Officer Bird

> went far beyond the performance of his established duties. He not only executed, filed and pursued an unlawful complaint against the plaintiff, he also arbitrarily usurped the function of a judicial tribunal and improperly pronounced the plaintiff 'at fault' for the accident. Thus, in one broad sweep, [Officer Bird] removed the cloak of 'innocent until proven guilty' which the Constitution wrapped around the plaintiff, and thereby deprived her of a fundamental constitutional right.

Plaintiff's Motion, at 4.

It is clear from the pleadings and the uncontroverted documents, however, that Vintilla cannot defeat Defendants' claim of qualified immunity because she has not established any constitutional violation. As Vintilla herself notes, it is among the routine duties of police officers to investigate car accidents. As one Ohio appeals court noted:

> Police officers who investigate accidents are called to the scene many times after the accident has occurred; seldom do they observe an accident in progress. After arriving at the scene of an accident, officers conduct an investigation by interviewing the parties and witnesses, if any, and gather physical evidence, if any, at the scene. Based upon their investigation, in many instances an officer will issue a citation on the spot.

Cleveland v. Nagy, No. 56730, 1990 WL 43653 *3 (Ohio Ct. App. Apr. 12, 1990). In this case, Officer Bird was called to the scene of Vintilla's accident. After questioning the witnesses and making observations, he concluded that Vintilla was at fault and, after reviewing his notes at the police station, issued her a citation. The citation required her to appear at Rocky River Municipal Court, presumably to either plead guilty or no contest and pay a fine or to plead not guilty and set a trial date. This is normal police practice. Vintilla has not articulated how Officer Bird conducted his investigation in a partial and unfair manner. That Officer Bird disagreed with Vintilla's assessment of who caused the accident does not render his investigation, the issuance of a citation to her or the criminal proceeding that was dismissed, a violation of due process. Vintilla has cited no authority from the Sixth Circuit, the Supreme Court, or any other court, suggesting that a police officer commits a constitutional violation if he issues a traffic citation without witnessing an accident, and this Court has not found any such case law.

Vintilla also appears to claim that either the insurance company's cancellation of her insurance policy or its subsequent reinstatement of her policy at an increased premium constitutes a deprivation of her property without due process. "The Due Process Clause of the Fifth Amendment guarantees that '[n]o person shall ... be deprived of life, liberty, or property, without due process of law.'" *United States v. James Daniel Good Real Property,* 510 U.S. 43, 48 (1993) (citations omitted). Due process requires that individuals must receive notice and an opportunity to be heard before the government deprives them of property. *Id* at 49 (citations omitted). Vintilla cannot establish a procedural due process violation because she cannot show that the government deprived her of her property, i.e., that the government increased her insurance premiums. Any claim

she has over the increase in her insurance rates must be taken up with her insurance company.

Vintilla's substantive due process allegations most nearly resemble a malicious prosecution claim, i.e., she has a due process right to be free of prosecution without reasonable cause. In *Frantz v. Village of Bradford,* 245 F.3d 869 (6th Cir. 2001), the Sixth Circuit resolved that, "in cases of egregious behavior that do not include a seizure, a plaintiff may have a § 1983 malicious prosecution claim supported by substantive due process rights." *Id.* at 877 (interpreting the Supreme Court decision in *Albright v. Oliver,* 510 U.S. 266 (1994). *But see Frantz,* 245 F.3d at 877-881 (Gilman, J., dissenting) (perceiving the majority opinion to preclude § 1983 claims based on malicious prosecution).

By way of example, the Sixth Circuit explained that "substantive due process may support a § 1983 malicious prosecution claim against a police officer who plants false evidence to implicate a suspect whose arrest was supported by probable cause, or against a state official found guilty of bribing jurors." *Frantz,* 245 F.3d at 877. *See also Buchanan v. Apfel,* 249 F.3d 485, 488 (6th Cir. 2001) (plaintiff alleging substantive due process violation must allege egregious, arbitrary abuse of government power that shocks the conscience).

Based on these examples, Vintilla has not articulated or established sufficiently egregious conduct on the part of Officer Bird. The worst that she can say about Officer Bird is that, after conducting his investigation, he came to the wrong conclusion. However, a substantive due process violation requires more intentionally reprehensible conduct than making a mistake. In any event, because her substantive due process allegations involve a pretrial deprivation of liberty, she must confine her malicious prosecution claim to the

Fourth Amendment. *Frantz,* 245 F.3d at 877. But Vintilla did not bring a § 1983 claim under the Fourth Amendment.[3]

Finally, Vintilla alleges an equal protection claim. "The Equal Protection Clause of the Fourteenth Amendment commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws.' which is essentially a direction that all persons similarly situated should be treated alike." *Bower v. Village of Mount Sterling,* 2002 WL 1752270, at *5 (quoting *City of Cleburne, Tex. v. Cleburne Living Ctr.,* 473 U.S. 432, 439 (1985); *Richland Bookmart, Inc. v. Nichols,* 278 F 3d 570, 574 (6th Cir. 2002)). While the Equal Protection Clause traditionally involved claims that legislative action impacted certain protected groups disfavorably, the Sixth Circuit has recognized "successful equal protection claims brought by a 'class of one,' where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." *Dubuc v. Green Oak Tp.,* 312 F.3d 736, 752 (6th Cir. 2003) (quoting *Village of Willowbrook v. Olech,* 528 U.S. 562, 564 (2000)). Vintilla has not articulated, let alone established, how she has been treated differently from other similarly-

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[3]Even if she had, she could not establish such a claim. The Fourth Amendment prohibits unreasonable searches and seizures; it is not a general prohibition against all unreasonable, unjustified or outrageous official conduct. *Cameron v. City of Pontiac,* 813 F.2d 782, 784 (6th Cir. 1987); *Tom v. Voida,* 963 F.2d 952, 956 (7th Cir. 1992). Vintilla does not allege that either she or her property was searched. Nor has she alleged that she was seized. *Michigan v. Chesternut,* 486 U.S. 567, 573 (1988) (a "seizure" of a person occurs under the Fourth Amendment when a police officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen such that the citizen would reasonably believe under all of the surrounding circumstances that he or she was not free to leave). Vintilla was never arrested. She received a summons in the mail. Thus, she cannot establish a Fourth Amendment violation either.

situated persons. Nor has she articulated or established irrational governmental conduct.

In short, Vintilla's unsupported legal conclusions that Officer Bird violated her due process and equal protection rights do not establish due process and equal protection claims. *Dominque v. Telb,* 831 F.2d 673, 676 (6th Cir. 1987); *Veney v. Hogan,* 70 F.3d 917, 922 (6th Cir. 1995). Because Vintilla has neither alleged nor established a violation of due process or equal protection against Officer Bird, his conduct is protected by qualified immunity and judgment must be granted in his favor. *Saucier,* 533 U.S. at 201.

B. Section 1983 Claim Against the City

In order for Vintilla to establish liability against the City under 42 U.S.C. § 1983, she must demonstrate that a deprivation of a constitutional right resulted from a City policy or custom. *Monell v. Dept. of Social Services City of New York,* 436 U.S. 658, 690-91 (1978). Plaintiff must establish that the City was the "moving force" behind the deprivation. *Board of County Comm'rs of Bryan County, Okla. v. Brown,* 520 U.S. 397, 404 (1997). Counties and municipalities cannot be held liable under § 1983 on a respondeat superior theory. *Id.* at 404.

Vintilla's only argument establishing liability against the City for the violation of her constitutionally-protected rights is based on Officer Bird's unlawful conduct. However, the doctrine of respondeat superior cannot provide the basis for § 1983 liability against the City. *Id.* Furthermore, she has established no underlying constitutional deprivation. *Monell,* 436 U.S. at 690-91. Nor has she bothered to articulate a City policy or custom that caused any perceived deprivation. *Id.* As a result, Vintilla has failed to provide sufficient evidence to support her § 1983 claim against the City.

C. Punitive Damages

Punitive damages may not be awarded under § 1983 claims against the City. *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247 (1981) (holding that municipalities are immune to punitive damages); *Chonich v. Wayne County Community College*, 973 F.2d 1271, 1274 n.3 (6th Cir. 1992).

III. Conclusion

Based on the foregoing, Plaintiff's Motion for Summary Judgment, **ECF No. 5,** is **DENIED**; and Defendants' Motion to Dismiss, **ECF No. 6**, is **GRANTED**. This Memorandum of Opinion and Order dismisses with prejudice all claims set forth in the Complaint.

IT IS SO ORDERED.

/ s / Dan Aaron Polster
United States District Judge

APPENDIX D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHO
EASTERN DIVISION

FILED
MARCH 7, 2003
CLERK, U.S. DISTRICT
COURT
NORTHERN DISTRICT
OF OHIO - CLEVELAND

LUCRETIA G. VINTILLA,	)	CASE NO. 1:02 CV
	)	2291
Plaintiff	)	
	)	JUDGE DAN
vs.	)	AARON POLSTER
	)	
	)	
CITY OF ROCKY RIVER, et al	)	JUDGMENT ENTRY
	)	
Defendants	)	

For the reasons stated in the Memorandum of Opinion and Order filed contemporaneously with this Judgment Entry, and pursuant to Federal Rule of Civil Procedure 58, it is hereby ORDERED, ADJUDGED AND DECREED that the above-captioned case is hereby terminated and dismissed as final.

/s/ Dan Aaron Polster
United States District Judge

APPENDIX E

AMENDMENT V

. . . No person shall be deprived of life, liberty or property without due process of law; . . .

APPENDIX F

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX G

FEDERAL RULES OF CIVIL PROCEDURE
RULE 12 (b) (6)

. . . If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

APPENDIX H

42 U.S.C., Section 1983

.Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

APPENDIX I

43 U.S.C., Section 1985 (3)

If two or more persons in any State or Territory conspire . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the law; . . . . . in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.